

FCC MAIL SECTION

Federal Communications Commission

FCC 97D-09

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 95-154
)	
CONTEMPORARY MEDIA, INC.)	
)	
Licensee of Stations WBOW(AM), WBFX(AM), and)	
WZZQ(FM), Terre Haute, Indiana)	
)	
Order to Show Cause Why the Licenses for)	
Stations WBOW(AM), WBFX(AM), and WZZQ(FM),)	
Terre Haute, Indiana, Should Not be Revoked)	
)	
CONTEMPORARY BROADCASTING, INC.)	
)	
Licensee of Station KFMZ(FM), Columbia,)	
Missouri, and Permittee of Station KAAM-FM,)	
Huntsville, Missouri (unbuilt))	
)	
Order to Show Cause Why the Authorizations for)	
Stations KFMZ(FM), Columbia, Missouri, and)	
KAAM-FM, Huntsville, Missouri, Should Not be)	
Revoked)	
)	
LAKE BROADCASTING, INC.)	
)	
Licensee of Station KBMX(FM), Eldon, Missouri,)	
and Permittee of Station KFXE(FM), Cuba,)	
Missouri)	
)	
Order to Show Cause Why the Authorizations for)	
Stations KBMX(FM), Eldon, Missouri, and)	
KFXE(FM), Cuba, Missouri, Should Not be Revoked)	
)	
LAKE BROADCASTING, INC.)	File No. BPH-921112MH
)	
For a Construction Permit for a New FM Station)	
on Channel 244A at Bourbon, Missouri)	

Appearances

Shelley Sadowsky, Esquire, Michael D. Gaffney, Esquire, Jerold L. Jacobs, Esquire, and Howard J. Braun, Esquire, on behalf of Contemporary Media, Inc., Contemporary Broadcasting,

Inc., and Lake Broadcasting, Inc.; *Robert A. Zauner, Esquire, and Anthony Mastando, Esquire*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

**INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE ARTHUR I. STEINBERG**

Issued: August 18, 1997

Released: August 21, 1997

PRELIMINARY STATEMENT

1. By *Order to Show Cause and Notice of Apparent Liability*, 10 FCC Rcd 13685 (1995) ("*OSC*"), the Commission directed Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc. (collectively the "Licensees"), to show cause in a hearing why the licenses and construction permits held by the Licensees should not be revoked. The following issues were specified:

- (1) To determine the effect of Michael Rice's convictions on the basic qualifications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
- (2) To determine whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., misrepresented to the Commission that, subsequent to his arrest, Michael Rice has been excluded from the management and operation of the Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., radio stations.
- (3) To determine, pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Michael Rice has engaged in the unauthorized transfer of control of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
- (4) To determine, in light of the evidence adduced under the foregoing issues, whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and/or Lake Broadcasting, Inc., possess the requisite qualifications to be or remain licensees of their respective radio stations.

2. Pursuant to Section 312(d) of the Communications Act of 1934, as amended ("*Act*"), the *OSC* assigned to the Mass Media Bureau ("*Bureau*") both the burden of proceeding with the evidence and the burden of proof on all the issues. (*OSC* at para. 22.) In addition, the *OSC* stated that if the hearing record does not warrant an order revoking the above-captioned licenses, it shall be determined whether any of the Licensees has willfully or repeatedly misrepresented

facts to the Commission in violation of Section 73.1015 of the Commission's Rules, or has engaged in an unauthorized transfer of control in violation of Section 310(d) of the Act and Section 73.3540 of the Rules. If so, the OSC further stated that it shall also be determined whether an order of forfeiture should be issued pursuant to Section 503(b) of the Act in an amount up to \$250,000 for such violation(s) of the Act and/or the Rules. (*Id.* at para 24.)

3. Prehearing conferences were held on November 29, 1995, and March 5, 1996. The hearing commenced in Washington, D.C., on April 2, 1996, with the admission of the parties' respective written direct case exhibits. Witnesses appeared for live testimony in Washington, D.C., on April 9, May 21, and May 22, 1996. The record was initially closed at the conclusion of the May 22, 1996, hearing session. (Tr. 642; *Order*, FCC 96M-128, released May 28, 1996.) Proposed findings of fact and conclusions of law were filed by the Licensees and the Bureau on September 9, 1996. Reply findings and conclusions were filed by those parties on October 4, 1996. By *Order*, FCC 97M-49, released April 4, 1997, the record was reopened for the limited purpose of receiving additional information into evidence. The record was then reclosed. (*Id.*)

FINDINGS OF FACT

Licensees' Ownership and Control

4. Contemporary Media, Inc. ("CMI"). CMI is the licensee of Stations WBOW(AM), WZZQ(AM), and WZZQ(FM), Terre Haute, Indiana. Michael Rice ("Rice") is the sole shareholder of CMI. (Lic. Ex. 1, p. 2.) Pursuant to the CMI bylaws, the Board of Directors consists of three persons elected by the shareholders to serve a term of one year. (*Id.* at 2 and Appx. A, p. 2.) For several years until August 23, 1991, CMI's Board consisted of Rice, his father, Malcolm Rice, and Martin Toft. On August 23, 1991, Toft resigned from the Board, and Janet Cox was appointed to replace him. The makeup of the Board has remained unchanged since then. (*Id.* at 2-3.)

5. Since CMI was established, Rice has been the President and Treasurer, and Malcolm Rice has been a Vice President of CMI, and they continue to hold these titles. By resolution of the Board dated March 13, 1991, Cox became a Vice President of CMI, and she continues to hold this title. Cox became the Secretary of CMI upon Toft's resignation from that position on August 23, 1991. (Lic. Ex. 1, p. 3.)

6. Contemporary Broadcasting, Inc. ("CBI"). CBI, which is a wholly-owned subsidiary of CMI, is the licensee of Station KFMZ(FM), Columbia, Missouri, and the permittee of Station KAAM-FM, Huntsville, Missouri. (Lic. Ex. 1, p. 3.) Pursuant to the CBI bylaws, the Board of Directors consists of three persons elected by the shareholders to serve a term of one year. (*Id.* at 3 and Appx. B, p. 2.) Like CMI, CBI's Board consisted of Rice, Malcolm Rice, and Toft for several years until Toft's resignation on August 23, 1991. At that time, Cox was appointed to replace him. The makeup of the Board has remained unchanged since then. (*Id.* at 3-4.)

7. Since CBI was established, Rice has been the President and Treasurer, and Malcolm Rice has been a Vice President of CBI, and they continue to hold these titles. By resolution of the Board of Directors dated May 8, 1991, Cox became a Vice President of CBI, and she continues to hold this title. Cox also became the Secretary of CBI upon Toft's resignation from that position on August 23, 1991. (Lic. Ex. 1, p. 4.)

8. Lake Broadcasting, Inc. ("LBI"). LBI is the licensee of Station KBMX(FM), Eldon, Missouri, the permittee of unconstructed Station KFXE(AM), Cuba, Missouri, and an applicant for a new FM station in Bourbon, Missouri. The original shareholders of LBI were Rice (67.5 percent), Dennis Klautzer (20 percent), and Kenneth Kuenzie (12.5 percent). (Lic. Ex. 1, p. 4.) On March 13, 1997, the shares of LBI held by Klautzer and Kuenzie were sold, transferred and assigned to LBI, where they remain held as treasury stock. (Order, FCC 97M-49, released April 4, 1997.) Therefore, Rice now holds all of the issued shares of stock in LBI, other than treasury stock.

9. Pursuant to the LBI bylaws, the Board of Directors consists of two persons elected by the shareholders to serve a term of one year. (Lic. Ex. 1, p. 4 and Appx. C, p. 4.) From 1988 until March 13, 1997, LBI's Board consisted of Rice and Kuenzie. Since LBI's formation, Rice has held the titles of President and Treasurer, Kuenzie has held the title of Vice President, and Klautzer has held the title of Secretary. In December 1991, Cox was appointed Vice President of Lake by resolution of the Board of Directors. On March 13, 1997, Klautzer resigned from the position of Secretary of LBI, and Kuenzie resigned from the positions of Vice President and Director of LBI. (*Id.* at 4-5; Order, FCC 97M-49, released April 4, 1997.)

Issue 1: The Felony Convictions of Michael Rice

10. In November 1990, Rice was arrested in St. Charles County, Missouri, for criminal charges involving sexual acts with a teenager, and formal criminal proceedings were initiated against him. At a March 21, 1991, preliminary hearing, the Associate Judge of the Circuit Court of St. Charles County found probable cause to certify the case for arraignment in Circuit Court. (Bur. Ex. 1, pp. 37-38.)

11. On April 1, 1991, the Prosecuting Attorney of St. Charles County issued an Information formally charging Rice with three counts of the felony of deviate sexual assault of an individual who was between 14 and 16 years of age. (Bur. Ex. 12.) The Information was subsequently amended on January 6, 1993, and July 5, 1994. (Bur. Ex. 1, pp. 7-12; Bur. Ex. 13.) In the July 5, 1994, Second Amended Information, Rice was charged with eight counts of the felony of deviate sexual assault of individuals who were between 14 and 16 years old, and four counts of the felony of sodomy of individuals who were less than 14 years of age. Rice's alleged misconduct took place between December 1985 and October 1990. (Bur. Ex. 1, pp. 7-12.) Rice entered a plea of not guilty to the Second Amended Information. (*Id.* at 14.)

12. On July 11, 1994, Rice, his criminal attorney, and the Assistant Prosecuting Attorney executed a Memorandum stipulating to the testimony that the parties expected to be given at trial

by certain witnesses if they were called to testify. (Bur. Ex. 1, pp. 14-19.) The Memorandum stated that Rice "specifically does not admit that any of the testimony is true or that any of the acts took place." (*Id.* at 14.) With respect to 11 of the 12 counts, the prospective witnesses would have testified that "Rice put his mouth on [the witnesses'] genitals." (*Id.* at 15-18.) With respect to the twelfth count, a witness would have testified that Rice "put his hand on [the witness'] genitals." (*Id.* at 18.) The Memorandum further stated that the acts described by the witnesses "constitute[] deviate sexual intercourse." (*Id.* at 19.) Rice offered no evidence and, by the Memorandum, made a Motion for Judgment of Acquittal. The matter was submitted to the Circuit Court of St. Charles County for a decision. (*Id.*)

13. On August 31, 1994, Rice was convicted of four counts of sodomy (RSMo. Section 566.060), six counts of deviate sexual assault in the first degree (RSMo. Section 566.070), and two counts of deviate sexual assault in the second degree (RSMo. Section 566.080). (Bur. Ex. 1, pp. 2-3, 21-22.) Each of these convictions constituted a felony. (*Id.* at 7-11.) The offenses for which Rice was convicted involved five children. (*Id.* at 3.)

14. Rice was sentenced to eight years in prison for each of the four sodomy counts, seven years in prison for each of the six deviate sexual assault in the first degree counts, and five years in prison for each of the two deviate sexual assault in the second degree counts. Rice's sentences, totalling 84 years, were to run concurrently. (Bur. Ex. 1, pp. 2-3, 21-22.) Therefore, the maximum time Rice would have to be imprisoned was eight years. Rice was incarcerated at the Farmington Correctional Center, Farmington, Missouri, on September 30, 1994. (*Id.* at 3; Lic. Ex. 1, p. 14.) Rice did not testify in this proceeding, although it appears that such testimony could have been arranged. (Letter to the Presiding Judge from the Licensees' counsel, dated December 12, 1995, official notice taken; *see also* Tr. 15-17.)

Mitigating Factors

15. In mitigation of Rice's felony convictions, the Licensees presented the following evidence.

16. Licensees' Record of Compliance with FCC Rules and Policies. Since their inception, Station KBMX, licensed to LBI, and Station KFMZ, licensed to CBI, have never been fined by the FCC. WBOW and WZZQ, each licensed to CMI, have been fined once. In November 1989, they received forfeitures totalling \$900 for a logging violation in connection with Emergency Broadcast System transmissions and an improperly prepared quarterly issues/programs list. Otherwise, the Licensees' collective record before the Commission has been unblemished. (Lic. Ex. 1, pp. 14-15.)

17. Rice's Reputation for Good Character in the Community. Four individuals who have known Rice personally and/or professionally for many years offered written statements relating to Rice's character and reputation in the broadcast community. (Lic. Ex. 5.)

18. J. S. Sellmeyer, P.E., a consulting broadcast engineer who has known Rice for more than 20 years on both a personal and professional basis, stated:

Mr. Rice has been a conscientious and progressive broadcaster in the period of time I've known him. He has always put forth his best efforts and the financial resources necessary to provide the best facilities and community service in the communities he serves. He has also provided guidance to many people in the broadcast industry, many of whom hold positions of high responsibility in the industry today.

In sum, Michael Rice and the licensee corporations, in my opinion, have always operated high quality broadcast stations and have always done their utmost to operate in full compliance with all Commission Rules and Policies. They have been honest, responsible broadcasters.

(Lic. Ex. 5, pp. 7-8.) Sellmeyer's written statement made no reference to Rice's felony convictions. (*Id.*)

19. James Andrew Butler, a Communications Systems Engineer with the Public Broadcasting Service, Alexandria, Virginia, who worked as the Operations Manager at KFMZ for four years beginning in 1971, stated:

I have kept in touch with Mike Rice, visiting his expanding operations from time to time, participating with him in industry conferences and watching him work on volunteer association committees to help improve broadcasting. I have found him to be a consistent source of information and inspiration. He has a keen understanding of the business of broadcasting and a strong commitment to "do it right". [sic] This knowledge and commitment have been a great benefit to the communities his stations serve and the larger community of the US Broadcasting [sic] industry. I continue to learn from him and be constantly challenged by his high standards.

(Lic. Ex. 5, pp. 1-3.) Butler's written statement, which consisted of the August 12, 1994, letter he wrote to the Associate Circuit Judge of the Circuit Court of St. Charles County, Missouri, in connection with Rice's sentencing in the criminal case, also stated: "Since I have not been in the midwest for some time, I am not familiar with the case you are considering[.]" (*Id.* at 2.)

20. Ronald P. Thompson, an insurance broker who brokered property and casualty insurance for Rice and the Licensees' stations since 1985, stated:

All of my dealings with Michael Rice (at least once a year), were professional and businesslike. He was always fair and honest with me, and considerate of my advice. . . .

Mike Rice recognized the importance of incorporating community involvement with his stations, to build up listeners and produce advertising revenue. His reputation in the radio broadcast business was excellent, according to everything I heard.

(Lic. Ex. 5, p. 10.) Thompson's written statement made no reference to Rice's felony convictions. (*Id.*)

21. William E. White, Chairman of the Board and General Manager of Station KIRL(AM), St. Charles, Missouri, has known Rice for 30 years. He stated:

Mike Rice was our Chief Engineer for 17 years, and he has done an excellent job.

Mike has created a lot of jobs and helped a lot of other people at his other Radio Stations in Indiana and Missouri.

Through his engineering ability he has helped other women and men to attain their goals. A person like him with his education and background & leadership ability can continue to help ladies and men complete their education, and help them with employment opportunities across the country.

(Lic. Ex. 5, p. 12.) White's written statement made no reference to Rice's felony convictions. (*Id.*)

22. Participation of Managers and Owners in the Misconduct. No other officer, director, shareholder or managerial employee of the Licensees, nor any of the Licensees' stations, were in any way involved in the criminal misconduct for which Rice was convicted. (Lic. Ex. 1, p. 15.)

23. Frequency and Currentness of the Misconduct. The misconduct for which Rice was convicted took place between December 1985 and October 1990. (Bur. Ex. 1, pp. 7-12.) There is no evidence that Rice engaged in any misconduct subsequent to those dates. Nearly seven years have passed since the last event giving rise to felony convictions of Rice.

24. Seriousness of the Misconduct. Rice was convicted of four counts of sodomy, six counts of deviate sexual assault in the first degree, and two counts of deviate sexual assault in the second degree. (Bur. Ex. 1, pp. 2-3, 21-22.) Each of these convictions constituted a felony. (*Id.* at 7-11.) The offenses for which Rice was convicted involved five children. (*Id.* at 3.)

25. Rice was sentenced to eight years in prison for each of the four sodomy counts, seven years in prison for each of the six deviate sexual assault in the first degree counts, and five years in prison for each of the two deviate sexual assault in the second degree counts. Rice's sentences, totalling 84 years, were to run concurrently, so that the maximum time Rice would

have to be incarcerated was eight years. (Bur. Ex. 1, pp. 2-3, 21-22.) Rice was incarcerated on September 30, 1994. (*Id.* at 3; Lic. Ex. 1, p. 14.)

26. Measures Taken to Prevent Further Misconduct. In July 1982, Cox was hired by Rice and his father, Malcolm Rice, as a bookkeeper with CBI and CMI. (Lic. Ex. 1, p. 2.) At that time, CBI owned Station KFMZ, and CMI had recently purchased Stations WBOW and WBOQ(FM) (now WZZQ(AM) and WZZQ-FM, respectively). Over time, Cox was delegated managerial responsibilities and, within approximately two years, became responsible for hiring and training the stations' traffic and sales employees and developing the stations' annual budgets. She also made presentations of CMI and CBI's business and financial plans to banks to obtain financing, and evaluated the business operations of potential station acquisitions. (*Id.* at 5.)

27. In 1988, when Rice, Kuenzie and Klautzer formed LBI to own and operate KBMX, Cox was involved in the station's start-up. She hired the sales and support staff, established office procedures, negotiated contracts, made presentations to banks for loans, and dealt with all vendors relating to furnishing the station's offices. (Lic. Ex. 1, pp. 5-6.)

28. Cox's role in the day-to-day management of the Licensees and oversight of the radio stations' business operations increased from 1988 to 1991, as Rice devoted more of his time to engineering and technical matters and to his other business interests such as real estate and broadcast tower leasing.¹ Kuenzie and Klautzer, LBI's former shareholders/officers, each were, and continued to be, employed full-time at other broadcast stations, which limited their involvement in overseeing the day-to-day management of the LBI station. (Lic. Ex. 1, pp. 6, 9-10.)

29. On or about April 3, 1991, approximately two days after Rice was formally charged in the criminal case, he was voluntarily hospitalized at the Barnes Hospital, St. Louis, Missouri, for in-patient psychiatric treatment. In view of the criminal charges, the Licensees' respective Boards of Directors adopted resolutions providing that Rice shall have "no managerial, policy, or consultative role in the affairs" and daily operations of the Licensees' stations. Rice did not participate in the adoption of these resolutions, which were adopted in lieu of 1991 annual meetings of the Boards. (Lic. Ex. 1, pp. 6-7 and Appx. D, E and F.) Cox testified that it was her idea, without consulting counsel, to adopt the resolutions. (Tr. 329.)

30. The corporate resolutions provided that, in consultation with Malcolm Rice and in conjunction with the station managers, Cox was to assume the responsibilities of Chief Executive Officer of CMI and CBI and supervise the managerial and policy decisions, as well as the day-to-day operations, of their stations. (Lic. Ex. 1, p. 8 and Appx. D and E.) Daniel Leatherman,

¹ CMI owns two AM towers in Terre Haute, Indiana. CBI owns broadcast towers in Columbia and Ashland, Missouri, both of which have tenants. LBI owns a broadcast tower in Lake of the Ozarks, Missouri, which has tenants, and Rice, personally, owns the FM tower on which WZZQ-FM and various tenants' antennas are located. (Lic. Ex. 1, p. 6.)

general manager of Station KBMX, in consultation with Kuenzie, was to assume the same responsibilities with respect to LBI's built and unbuilt stations. (*Id.* at Appx. F.) However, because Kuenzie was involved full-time in the ownership and operation of stations in Washington, Missouri, he delegated to Cox the responsibility of working with Leatherman in overseeing the day-to-day management and operations of KBMX. (*Id.* at 9.) Cox's elevation to the position of Chief Executive Officer of CMI and CBI was reflected in a salary increase and Employment Agreement which she entered into with CMI and CBI on June 1, 1991. (*Id.* at 9 and Appx. H.)

31. Within a few weeks after Rice was hospitalized, Cox traveled to each of the Licensees' stations for meetings with the staffs for the purpose of informing them of her assumption of the Chief Executive Officer position and of Rice's withdrawal from the management of the stations. (Lic. Ex. 1, p. 9.) Cox testified that she told the various stations' staff members, not all of whom attended the meetings, that Rice was hospitalized and would not be involved in the operations of the stations, that the stations would continue to operate in the manner in which they had been operating, that is, "very professionally," and that "these individuals were that station, not anyone else." She did not give the staff members a time frame in which Rice would remain uninvolved in the stations because she did not know at that time how long Rice was going to stay in the hospital. She did not inform the staff members of the corporate resolutions referred to above, nor did she inform the staff members that, even after Rice left the hospital, he was not to be involved in station operations. (Tr. 208-09; *see also* Tr. 394-97.)

Issues 2 and 3: Misrepresentation and Transfer of Control Issues

Licensees' Notifications to the FCC of Michael Rice's Status

32. On June 14, 1991, LBI filed with the Commission a "Statement Pursuant to Section 1.65 of the Commission's Rules" reporting the then pending criminal charges against Rice. The statement was five pages in length, was signed by Kuenzie in his capacity as Vice President of LBI, and was filed in connection with a then pending major modification application of LBI. (Bur. Ex. 1, pp. 34-40.) Therein, it was reported that:

Since Mr. Rice's hospitalization on April 3, 1991, he has had absolutely no managerial, policy, or consultative role in the affairs of the [Licensees] in which he has ownership interests and officer positions. . . . In other words, pending a resolution of the referenced criminal charges, Mr. Rice is being completely insulated and excluded from any involvement in the managerial, policy, and day-to-day decisions involving any of the four licensed stations and three construction permits held by the [Licensees]. Instead, and most importantly, all such decisions are being made, and the four operating stations are being run, in a collegial manner by a combination of corporate officers and skilled and experienced professional employees [including Cox, Malcolm Rice, and the stations' managers].

(*Id.* at 39, emphasis added.) The statement also made reference to the Commission's *Policy Statement Regarding Character Qualifications*, 5 FCC Rcd 3252 (1990) (subsequent history omitted) ("*1990 Character Policy Statement*"). (*Id.* at 36; *see also id.* at 34.)

33. On June 21, 1991, CBI filed with the Commission a second "Statement Pursuant to Section 1.65 of the Commission's Rules." This statement was five pages long, and was signed by Cox in her capacity as Vice President of CBI. The portion of the June 14, 1991, statement quoted in the preceding paragraph was repeated in CBI's June 21, 1991, filing. This statement, too, referred to the *1990 Character Policy Statement*. (Judge's Ex. 1.)

34. On August 1, 1991, CBI filed an application (FCC Form 307) for an extension of its construction permit for Station KTDI(FM), Huntsville, Missouri. Exhibit 2 to that application made reference to CBI's June 21, 1991, Section 1.65 statement and contained the following language:

Mr. Rice continues to be hospitalized and to have absolutely no managerial, policy, or consultative role in the affairs of [CBI]. In particular, Mr. [sic] Janet Cox, a Vice President of [CBI], continues to make all policy decision [sic] pertaining to unbuilt Station KTDI(FM), in consultation with Vice-President Malcolm R. Rice.

(Bur. Ex. 1, pp. 42-43, emphasis added.)

35. By letter dated December 3, 1991, to Stuart B. Bedell, Assistant Chief of the Bureau's Audio Services Division, CBI updated the status of Rice's criminal prosecution. The letter was three pages in length and stated:

In addition, Mr. Rice continues to have no managerial, policy, or consultative role in the affairs of KTDI(FM), and Ms. Janet Cox continues to make all policy decisions, if any, pertaining to the unbuilt station.

(Bur. Ex. 1, pp. 42-44, emphasis added.) By letter dated February 26, 1992, to Mary McDonald of the Audio Services Division's AM Branch, CMI informed the Commission that Cox is a "regular vice-president" of CMI and that there had been no change in the status of the criminal proceedings against Rice. (*Id.* at 46-47.)

36. By letter dated May 14, 1992, CBI transmitted another FCC Form 307 application relating to Station KTDI(FM). Attached to the application was a two-page exhibit entitled "Representations in Original Application that are No Longer 'True and Correct' (FCC Form 307, Q. 8)." Therein, CBI stated:

There has been no change in Mr. Rice's status with [CBI] or in the status of the proceedings against him since [CBI's] December 3, 1991 letter to Stuart B. Bedell Mr. Rice is no longer hospitalized, but he continues to be treated by

his physicians as an outpatient, and he continues to have no managerial or policy role in the affairs of the [Licensees] in which he has ownership interests and corporate positions

(Lic. Ex. 1, Appx. G-2, emphasis added.)

37. By three-page letter to the Commission filed on September 30, 1994, the Licensees reported that on August 31, 1994, Rice had been:

formally convicted and sentenced to eight years confinement on four counts of sodomy; seven years confinement on six counts of first degree deviate sexual assault; and five years confinement on two counts of second degree deviate sexual assault.

The Licensees further stated that Rice's incarceration began on September 30, 1994. (Bur. Ex. 1, pp. 53-55.)

38. On the subject of Rice's insulation from corporate affairs, the September 30, 1994, letter stated:

[CBI/LBI] has previously reported to the Commission that since Mr. Rice's pre-trial hospitalization on April 3, 1991, he has been excluded from involvement in the customary managerial, policy, and day-to-day decisions and operations of [CBI/LBI's] licensed stations and construction permits. Instead, such decisions have been made and continue to be made primarily by corporate Vice-President Janet Cox and by other experienced professional station employees. [CBI/LBI] wishes to advise the Commission that this exclusion policy will continue throughout Mr. Rice's period of incarceration.

(Bur. Ex. 1, p. 54, emphasis added.) The Licensees also requested a 90-day period within which to file a brief presenting their arguments against the initiation of a revocation proceeding, stating:

[The Licensees are] aware that, historically, the Commission may commence revocation proceedings against licensees where a principal has been convicted of a felony. However, [the Licensees] strongly believe[] that such a proceeding should not be commenced herein for sound legal reasons. To this end, counsel are preparing a comprehensive brief to justify their position. This brief will also be used in partial response to the Informal Objection filed on September 26, 1994 by KWIX, Inc. against Station KAAM's pending application for extension of construction permit

(*Id.* at 54-55, emphasis in original.)

39. Other updates on Rice's criminal proceeding and his status with respect to the stations were provided in Section 1.65 statements, applications and correspondence filed with the Commission in July 1991, September and November 1992, February and June 1993, and August 1994. (Lic. Ex. 1, p. 7.) However, the record does not contain copies of these documents.

40. Cox testified that during Rice's approximate six-month hospitalization, and for several weeks after his discharge in October 1991 (Tr. 537), she had no direct contact with him. She stated that although she had indirect contact with Rice through his father, Malcolm, who visited him in the hospital, Malcolm Rice did not relay any instructions to her from Rice concerning how to run the stations. (Tr. 220-21; Lic. Ex. 1, p. 10.)

41. Several weeks after his release from the hospital, Rice came to the Licensees' headquarters office and informed Cox that his psychiatrist advised him that it was important for his mental health to resume business interests that he enjoyed and to remain active. (Lic. Ex. 1, pp. 10-11.) Rice told her that he might be interested, from time to time, in "working on repair of equipment, things of that nature, but he said nothing . . . heavy." (Tr. 204.)

42. Given the circumstances of Rice's impending criminal trial, Cox suggested that it would be in the best interest of the Licensees, from both a public relations and a regulatory standpoint, that he remain completely uninvolved in the oversight and management of the Licensees' operations until and unless he was exonerated, and Rice concurred. (Lic. Ex. 1, p. 11.) When asked to explain her regulatory concern, Cox indicated that it was in connection with the fact that the Licensees had been reporting to the Commission that Rice "was not involved, so therefore he should not be involved." (Tr. 224.)

43. However, Cox decided that Rice could provide assistance to the Licensees' consulting engineers and stations' chief engineers on technical projects for the stations, as necessary, without becoming involved in the stations' management, policy making, or day-to-day operations. (Lic. Ex. 1, p. 11.) She made that decision, in her words, from an "economic standpoint," that is, since Rice was receiving a salary, she told him "we might as well get some good out of you." (Tr. 225.) Cox spoke to the Licensees' FCC attorneys before agreeing to permit Rice to perform tasks for the stations (Tr. 207), but she did not speak to Rice's doctors about that matter (Tr. 204). The technical projects that Rice worked on were cleared with Cox first. (Tr. 205, 225.)

44. In connection with the reports filed with the Commission, Cox stated in her written testimony that because Rice began to engage in limited and sporadic engineering tasks for the stations in early 1992, the Licensees' reports filed with the Commission were "modified" to "more accurately" describe Rice's changed role. Specifically, prior to May 1992, the reports stated that Rice had no managerial, policy, or "consultative" role in the affairs of the Licensees and their stations. However, in the May 14, 1992, and subsequent reports, the reference to "consultative" role was deleted. Thus, the May 14, 1992, report stated that "[Rice] continues to have no managerial or policy role in the affairs of the [Licensees] . . ." (Lic. Ex. 1, p. 8 and Appx. G-2, emphasis added.) Cox testified that: "What we were trying to do [by eliminating the phrase 'consultative role'] was to be as truthful as possible with the FCC." (Tr. 292.) When

asked by the Presiding Judge why a direct statement to the effect that Rice began engaging in limited or sporadic engineering tasks for the stations was not included in the reports filed with the Commission, Cox answered: "I don't know." (Tr. 292-93.)²

45. Cox testified that the decision to drop the reference to "consultative" role was made by her. She did so because she was then using, and intended in the future to use Rice in a consultative capacity. (Tr. 291, 298.) She stated: "He was drawing a paycheck. He was available at certain times. So . . . I said why not -- as the expression goes -- why not get some bang for the buck." (Tr. 298.)

46. No corporate resolutions were passed authorizing Rice to undertake consultative work for the Licensees' stations. As to why that was the case, Cox explained that the corporations had always been informally structured, and that "there were a lot of things going on in Mike Rice's life" at the time, namely, his legal proceedings and his mother's ill health. Cox stated that it was "a housekeeping function that was not done." (Tr. 328-29.)

47. The following table summarizes the amount of salary Rice was paid during the relevant periods of time.

Time Period	Total Salary Paid to Rice
April 1, 1991, through December 31, 1991	\$45,000
January 1, 1992, through December 31, 1992	\$60,000
January 1, 1993, through December 31, 1993	\$75,010
January 1, 1994, through September 30, 1994	\$58,504

(Tr. 536-37.)

Michael Rice's Post-Hospitalization Involvement in Technical/Engineering Projects

48. Cox testified that Rice assisted from time to time in the repair or installation of equipment at the various stations. For instance, in the spring of 1992, the construction of CMI's second AM station on 640 kHz (now WBOW) got underway in Terre Haute, and Rice assisted the engineers in the installation and proofing of the station's directional antenna. The station received program test authority in October 1992. (Lic. Ex. 1, p. 11.) Cox also described Rice's participation in some projects as that of a "go'fer," that is, one who ran errands for such items as wire, batteries, and soft drinks for the other workers. (Tr. 281-82.)

² Elsewhere in the record, Cox stated that she is "a pretty straightforward person" and the Presiding Judge agreed with her assessment. (Tr. 218.)

49. Daniel Leatherman, the general manager of LBI's station KBMX from September 1990 to mid-March 1996 (Lic. Ex. 3, p. 1; Tr. 133-34), testified that Rice's purpose for visiting KBMX from time to time was to work on technical equipment (Tr. 152). For instance, Rice helped in the construction of a second production studio for KBMX. (Lic. Ex. 3, pp. 1-2; Lic. Ex. 1, p. 12.) Leatherman testified that after April 1991, Rice helped install equipment at the station "[a] lot less" frequently than before April 1991. (Tr. 172.) In addition, Rice's on-site visits to the station were usually at night and on weekends, and Leatherman recalled that Rice and Eric Hoehn, the KBMX chief engineer, were there to fix equipment during normal business hours only if there was a major problem which, after April 1991, happened "maybe once. Not too often." (Tr. 174, 176; Lic. Ex. 1, p. 11.)

50. Leatherman also testified that Rice did not supervise the technical operation of the station. That was done by Hoehn. (Tr. 174.) Further, if KBMX experienced technical difficulties, Rice was not one of the persons who was telephoned. According to Leatherman, if the chief engineer was not available, Kenneth Kuenzie was called. (Tr. 177.) Rice's name and telephone number were not on the station's list of individuals to call in case of an emergency. (Tr. 177-78.) Cox similarly testified that Rice was not contacted if one of the Licensees' stations experienced technical problems. Such problems were reported to station management and the station engineer. (Tr. 337-38.)

51. Kenneth Brown, general manager of CMI's stations WZZQ(AM), WZZQ(FM), and WBOW(AM), Terre Haute, Indiana, since April 1993 (Lic. Ex. 4, p. 1), testified that he saw Rice at the stations only on three or four occasions. He stated that Rice assisted in the installation of a new transmitter and tower for WZZQ(AM), and that on a few other occasions Rice came to oversee the installation of antennas on the FM tower in Terre Haute that Rice personally owned. (Lic. Ex. 4, p. 3.)

52. Cox stated that Rice's involvement in technical and engineering projects for the Licensees' stations was sporadic because he had other matters occupying his time. He resumed his landlord responsibilities in connection with the following properties he personally owned: the land and the building which houses the KBMX main studio, the building which houses the WBOW/WZZQ(AM)-FM main studios and other unrelated tenants, and the FM tower in Terre Haute. He also resumed his position as a technical consultant to Station KIRL, St. Charles, Missouri (unrelated to the Licensees), for which he received a salary. In addition, Rice continued to have regular out-patient psychotherapy and spent a substantial amount of time caring for his elderly parents during this period of time.³ Further, Rice undertook a several-months project of traveling around Illinois and Missouri to at least 10 AM stations (unrelated to the Licensees) which retained him to make certain technical measurements which the FCC required of such stations in 1994. (Lic. Ex. 1, pp. 12-13.)

³ Rice's mother died after a long illness in July 1994. At approximately the same time, his 86 year old father, Malcolm, was incapacitated for a few months with a broken hip. (Lic. Ex. 1, pp. 12-13.)

Michael Rice's Post-Hospitalization Involvement in Non-Technical Matters

53. Testimony of Janet Cox.⁴ As discussed earlier, Cox was hired as a bookkeeper with CBI and CMI in July 1982. At that time, CBI owned Station KFMZ, and CMI had recently purchased Stations WBOW and WBOQ(FM) (now WZZQ(AM) and WZZQ-FM, respectively). (Lic. Ex. 1, p. 2.) Over time, Cox was delegated managerial responsibilities and, within approximately two years, became responsible for hiring and training the stations' traffic and sales employees and developing the stations' annual budgets. She also made presentations of CMI and CBI's business and financial plans to banks to obtain financing, and evaluated the business operations of potential station acquisitions. (*Id.* at 5.) In 1988, Cox was involved in the start-up of LBI station KBMX. She hired the sales and support staff, established office procedures, negotiated contracts, made presentations to banks for loans, and dealt with all vendors relating to furnishing the station's offices. (*Id.* at 5-6.) Cox's role in the day-to-day management of the Licensees and oversight of the radio stations' business operations increased from 1988 to 1991. (*Id.* at 6.)

54. Pursuant to resolutions of the Licensees' respective Boards of Directors on various dates in 1991, Cox assumed the duties of Chief Executive Officer of CMI and CBI. Further, in consultation with others, Cox was responsible for supervising the managerial, policy decisions, and day-to-day operations of the CMI, CBI and LBI stations. (Lic. Ex. 1, pp. 6-7 and Appx. D, E and F.) Also in 1991, Cox became the corporate Vice President of CMI, CBI and LBI, the corporate Secretary of CMI and CBI, and was appointed to the Board of Directors of CMI and CBI. (*Id.* at 2-5.)

55. In June 1991, Cox entered into an Employment Agreement with CMI and CBI. (Lic. Ex. 1, p. 9 and Appx. H.) Under this agreement, Cox's initial base salary was \$57,500. In addition, *inter alia*, Cox was entitled to annual cost of living increases; was entitled to an annual bonus of 2 percent of the company's net profits; was to receive health insurance coverage; was entitled to participate in any executive medical plan adopted by the company; was entitled to the use, maintenance and repair of an automobile; was entitled to participate in any company pension plan; was entitled to the unlimited reimbursement of business expenses; and was entitled to four weeks of paid vacation per year. The term of the Employment Agreement was for a period of 10 years and there was provision for the automatic renewal thereof for an additional five-year period. (*Id.* at Appx. H, pp. 2-3; Tr. 600.)

56. Cox believed that she earned either \$56,000 or \$60,000 from the Licensees in 1995. (Tr. 596.) Cox also testified that she has other sources of income (Tr. 592-93), and that if she did not have her employment position with CMI and CBI, she could continue to live in the style to which she has become accustomed (Tr. 600).

⁴ See also paragraphs 70, 83, 85, 95, 100, 106, 114, 117, 121, 122, 127, 128, 131, and 135, *infra*.

57. Cox's daughter is the general manager of LBI station KBMX (Tr. 592), and that is her only job (Tr. 596). Cox believed that her daughter's salary in 1995 was \$25,000 or \$26,000. (Tr. 596.) As a full-time employee, her daughter also receives "hospitalization" through the Licensees. (Tr. 601.) Cox's son is the sales manager of CMI's Terre Haute stations (Tr. 592), and that is his only job (Tr. 597). Cox believed that her son earned approximately \$40,000 as a sales manager in 1995. (Tr. 597.) Cox's husband's company, in which Cox has a part interest, derives revenue from business it does with the stations. (Tr. 592-93.) Cox estimated such revenue for 1995 as "maybe" \$1,000. (Tr. 598.) According to Cox, she, her husband, and her children all have other sources of revenue. (Tr. 592-93, 597.)

58. Cox testified that the only financial matter of the Licensees in which Rice, from time to time, had any involvement was the ministerial co-signing of checks if she or Malcolm Rice, who also had check signing authority, was unavailable to co-sign. (Lic. Ex. 1, p. 12.) However, Rice never issued a check that Cox did not authorize, nor did he ever withhold a signature when she asked him to sign a check. (Tr. 304.)

59. Historically, the Licensees maintained checking accounts requiring two officers' signatures on checks. (Tr. 302-03, 316-17.) Cox personally wanted a two-signature account for her own protection in the event the Rices' relatives ever questioned her check-writing practices. (Tr. 316-17.) In December 1992, LBI's account was converted to a single-signature account. (Bur. Ex. 5, p. 1.) The accounts of CMI and CBI were converted to single-signature accounts on September 28 and 29, 1994, respectively, the two days before Rice's incarceration. (Bur. Ex. 3, pp. 5-9; Bur. Ex. 4.) However, Rice remained one of the individuals authorized to sign checks on the LBI, CMI, and CBI accounts. (*Id.*; Bur. Ex. 5, p. 1.)

60. In discovery, the Licensees produced a random sampling of checks written on the three Licensees' respective accounts. A total of 504 checks issued between April 1991 and September 1994 were produced. Of those 504 checks, 31 (or 6.15 percent) were signed by Rice. All 31 were two-signature checks. (Bur. Ex. 10; Tr. 193-94; *see also* Tr. 90-94.)

61. In connection with the Licensees' business operations subsequent to April 1991, Cox testified that Rice did not do any of the Licensees' accounting work (Tr. 330), did not prepare or send out bills (Tr. 331), did not have any responsibility for paying bills except for signing checks as indicated above (*id.*), did not take out any loans on behalf of the Licensees (Tr. 332-33), purchased equipment for the stations only at her specific request (Tr. 333-34), and did not determine employees' salaries (Tr. 335). In particular, Rice had no involvement in negotiating the employment contracts or the salaries of Richard Hauschild, general manager of KFMZ since June 1991, and Kenneth Brown. (Tr. 279-81; Lic. Ex. 2, p. 1.) Indeed, Rice had no involvement in the hiring of Brown. (Lic. Ex. 4, p. 1.)

62. Cox, not Rice, negotiated a lease for the Licensees' new corporate headquarters in October 1993. She did so without Rice's input or his knowledge of where the new headquarters would be. Cox testified that Rice only knew that they had to move because the building in which the headquarters office had been located was being sold. (Tr. 275-77.) Cox also

negotiated the lease on behalf of the Licensees in connection with an earlier move of the headquarters, in March 1991, to a building she co-owned with her husband. She did this without Rice's input, but informed him beforehand that she was considering moving the headquarters to one of the buildings she and her husband co-owned. (Tr. 277-79.)

63. Cox testified that she developed updates to the CMI/CBI Employee Policy Manual in 1992 and 1994 without any input from Rice. She negotiated contracts with many vendors who previously dealt with Rice and delegated to the stations' engineers contacts with certain vendors with whom Rice previously dealt. (Lic. Ex. 1, p. 13.)

64. According to Cox, Rice had no involvement in setting station policy regarding the number of commercials per hour that could run (Tr. 338), did not make sales calls (Tr. 338-39), and did not sign leases or contracts unless a credit application required the corporate president's personal guarantee (Tr. 339-40). Cox also testified that when an equipment supplier required a personal guarantee, she would usually say: "Well if that's the case, there is [sic] 10 other equipment suppliers. Forget them." (Tr. 340.) In addition, Cox testified that Rice did not supervise any personnel (Tr. 336), and did not get involved in personnel and programming decisions (Tr. 228-29). However, Cox further stated that, because Rice was a "student of the [broadcast] industry," he would periodically receive calls initiated by employees, particularly announcers or disc jockeys, seeking advice. (Tr. 336.)

65. Cox testified that Rice was not involved in, and never instructed her to fire an announcer, program director, or general manager, but he "might have said an announcer sounds terrible." (Tr. 216-17.) Her response to such a comment by Rice "probably" would have been: "Well, you get what you pay for." (Tr. 218; *see also* Tr. 261-62.) Cox did not interpret such a comment by Rice as an order to fire the announcer. (Tr. 262-63.)

66. Cox testified that Rice's only involvement in the termination of a general manager was in his capacity as a witness to her termination of John Rhea, who worked as the general manager of CMI's Terre Haute stations for approximately one year (December 1991 to December 1992). (Tr. 232-33, 478-79.) The decision to fire Rhea was made by Cox. (Tr. 234-35.) Rice was present because Cox had been advised to have a witness to the termination of an employee, especially one in a management-level position. (Tr. 235-36.)

67. Cox testified that before April 1991 Rice was not a hands-on manager or a hands-on policy maker at the stations, and after April 1991 "[i]t became even less, and even after '91, I guess you could say I didn't even pay as much attention to the input after that length of time because of all the extenuating circumstances." (Tr. 341.)

68. After Rice's incarceration on September 30, 1994, Cox received communications from him in the form of telephone calls and written notes. There was no set pattern. At first, Cox heard very little from Rice. Later, when his father's health deteriorated, Cox heard from him more often. At the time of her testimony, Cox stated that she received letters from Rice "[m]aybe twice a month." (Tr. 308.) Rice's letters were usually about personal matters. When

they talk, Cox "may mention" to Rice station matters such as the hiring of personnel, advertising, and new equipment purchases. (Tr. 308-09.) Cox has also used Rice as an informational resource, as she would a consulting engineer, if she had questions about particular brands of equipment. (Tr. 230-31.) According to Cox, Rice does not make policy or managerial decisions concerning the day-to-day operations of the stations, and Cox does not seek his input or advice on these matters or take orders or directions from him. (Lic. Ex. 1, p. 14.)⁵

69. Testimony of Daniel Leatherman. As noted earlier, Leatherman was the general manager of KBMX(FM) from September 1990 to mid-March 1996. (Lic. Ex. 3, p. 1; Tr. 133-34.) Leatherman testified that no KBMX personnel reported to Rice or were accountable to Rice. Jeff Carr, the program director, ran the programming, and Leatherman ran everything else. All station personnel were accountable to Leatherman and he was accountable solely to Cox. (Tr. 175.)

70. The record contains six memoranda faxed between Rice and Leatherman in April, May, July, and November 1993. (Bur. Exs. 8 and 11.) The first five (April, May, and July), dealt with the following subject matters: the purchase of an outdoor sign for KBMX, the construction of a storage building, the acquisition of a water cooler at KBMX, the repair of the KBMX newsroom telephone, pressure washing the air conditioner condenser units, and construction for the conversion of a shower stall into a storage room in the studio building. (Bur. Ex. 8; Tr. 144-54). Leatherman testified that, in his opinion, the referenced memos did not relate to KBMX's daily broadcast operations, but had to do with Rice's concerns as a landlord with the station's physical plant. (Lic. Ex. 3, p. 2; Tr. 183.) Cox, too, testified that, in her opinion, these memos related to engineering or technical matters, or to landlord concerns. (Tr. 320-33.) In this regard, the physical facilities from which KBMX operated were owned by Rice and he was the landlord of those facilities. (Tr. 321.) Leatherman stated that he did take care of all of the projects which were the subjects of those five memoranda. (Tr. 152.)

71. In the sixth memorandum (November), Rice asked Leatherman and Jeff Carr to let him know if the station needed some sound effects CDs. (Bur. Ex. 11.) Leatherman explained that then LBI shareholder, Dennis Klautzer (also known as Casey Van Allen) (Tr. 135-36, 171) told Rice that KBMX needed more sound effects CDs, and Rice's memo was a follow-up inquiry as to whether that was, in fact, the case (Tr. 155-59). Leatherman testified that he did not say anything to Rice about this memo. (Tr. 160.) Rather, Leatherman responded to Rice's memo by talking to Cox, who told him that they did not need any more music. (Tr. 159-60.) When asked why he responded to Cox, Leatherman stated that he always communicated with her. (Tr. 158.) Leatherman explained that when he was hired as the general manager he had insisted on being answerable to only one person, and it had been agreed that the one person would be Cox. (Tr. 136.) With respect to his responding to Cox rather than to Rice, Leatherman stated: "I'm insisting on what we agreed on when I was first hired." (Tr. 159.)

⁵ See, however, paragraph 135, *infra*.

72. From the beginning of his tenure with LBI, Leatherman sent sales reports to LBI's headquarters in St. Peters, Missouri. Leatherman never had any discussions with Rice concerning the substance of any such reports, nor did he and Rice have any discussions concerning personnel matters, such as hiring and firing. Leatherman's contacts with LBI management pertaining to personnel matters were exclusively with Cox. He also participated in annual budget meetings with Cox at LBI headquarters. Rice did not attend or otherwise participate in these meetings. Leatherman further testified that there was no change in the manner in which KBMX operated after Rice's conviction or his subsequent incarceration. (Lic. Ex. 3, pp. 2-3; Tr. 173.)

73. Regarding more specific areas of station operations, Leatherman testified that Rice never availed himself of the station's petty cash (Tr. 168); did not have access to the station books and records which Leatherman kept at KBMX (Tr. 169); never asked to see such records (Tr. 169-70); did not send out bills (Tr. 170); had no involvement in paying ASCAP, SESAC and BMI (Tr. 170-71); never made any loans on behalf of the station (Tr. 171); did not do any sales work (Tr. 179); did not use tradeout arrangements after April 1991 (Tr. 180); had no involvement in establishing the station's rate card (*id.*); had no involvement in signing or approving sales contracts (Tr. 180-81); and had no involvement in matters regarding federal, state and local taxes, withholding taxes, or W-2 forms (Tr. 181).

74. Leatherman also testified that Rice had no involvement in dealing with prospective employees, in hiring or firing station employees, in setting salaries, or in supervising any KBMX personnel. (Tr. 172-73.) When asked by the Presiding Judge whether Rice ever supervised any of Leatherman's activities, Leatherman responded: "Never." (Tr. 173.) Then, when the Presiding Judge suggested that Rice supervised Leatherman "to the extent reflected in the [April, May, July, and November 1993] faxes," Leatherman answered: "Right." (Tr. 174.) Leatherman stated that Rice had no contact with Jeff Carr, the KBMX program director. According to Leatherman: "That was something that was just not done. I would have heard about it, believe me." (Tr. 155.) In addition, although the easy listening format of the station was not changed, it was, in Leatherman's words, "fine tun[ed]." (Tr. 142.) Rice did not participate in that decision or in any discussions relating thereto. (*Id.*) Leatherman testified that Rice was so uninvolved in managerial, policy, or day-to-day operations at KBMX that some members of the station's staff, particularly part-time employees, did not know he was an owner of the station. (Lic. Ex. 3, p. 2; Tr. 175-77.)

75. Testimony of Richard Hauschild.⁶ Richard Hauschild has been employed with CBI station KFMZ, Columbia, Missouri, since October 1988, and was promoted to the positions of general manager and sales manager in June 1991. (Lic. Ex. 2, p. 1.) Apart from his positions at the station, Hauschild has no other employment. Except for "small investments," Hauschild has no additional sources of income. (Tr. 634.) Hauschild testified that Rice had no involvement in his promotion, which followed an interview with Cox and Malcolm Rice. Hauschild stated that he has had very minimal contact with Rice since he became employed at KFMZ as an

⁶ See also paragraphs 84, 92, 93, 95, and 97, *infra*.

account executive. Specifically, he has had no more than three or four contacts with Rice, all in person, and all limited to general, informal conversation, not station business, operation, or programming matters. (Lic. Ex. 2, pp. 1-2; Tr. 622.) Hauschild also testified that, in April 1991, he attended a staff meeting at which either Cox or Scott Boltz, his predecessor, informed the staff that Rice was no longer going to be involved in the day-to-day operations of the radio station. (Tr. 629-31.)

76. Hauschild further testified that since becoming the general manager of KFMZ, he has received no letters, memos or other correspondence, or telephone calls from Rice regarding sales, programming, personnel, or any other aspect of station policy, management or daily operations. Likewise, Hauschild has never written a letter or memo to Rice, nor telephoned him to discuss sales, programming, personnel or station management, policy, daily operations or any other matter concerning the station. (Lic. Ex. 2, p. 2.)

77. Hauschild stated that all of his contacts with CBI have been with Cox or her administrative assistants with whom he meets, speaks to by telephone, and communicates with in writing on a regular basis. Hauschild has attended annual budget meetings with Cox at company headquarters in St. Peters, Missouri, in October or November of each year since 1991. These meetings were attended by the KFMZ program director and, on occasion, the station engineer. Rice never participated in person, by telephone, or otherwise, in any of these meetings. (Lic. Ex. 2, pp. 2-3.)

78. Testimony of Kenneth Brown. Kenneth Brown, the current general manager of WZZQ(AM), WZZQ(FM), and WBOW(AM), testified that he was hired by Cox in April 1993 without speaking to or meeting with Rice, and that he did not know who Rice was until after he became employed by CMI. Like Hauschild, Brown testified that his contacts with company headquarters have been with Cox and her administrative assistants, and never with Rice. Brown also testified that he has received no letters, memos, or other correspondence, or telephone calls from Rice concerning the stations' sales, programming, personnel, or operations. Similarly, Brown has never written a letter or memo to Rice, or telephoned him for the purpose of discussing such matters. He testified that he regularly speaks by telephone or communicates in writing with Cox and her administrative assistants, but never with Rice. (Lic. Ex. 4, pp. 1-2.)

79. Brown's only face-to-face contacts with Rice were a few casual conversations when Rice came to Terre Haute on matters relating to the FM tower he owns there or to equipment installation. Brown testified that during these conversations, he and Rice had no "in-depth" discussions concerning the day-to-day operations of the Terre Haute stations, and that Rice never gave him any orders or directions concerning such operations. Moreover, Rice has never provided Brown with any programming consultation and, Brown stated, Rice has had no involvement in any hiring or firing of personnel since he (Brown) became the Terre Haute general manager. (Lic. Ex. 4, p. 3.)

80. Brown also attends annual budget meetings with Cox at the Licensees' headquarters, and testified that Rice has not attended or otherwise become involved in any of these meetings.

Brown stated that he has never spoken with or otherwise consulted Rice on any of the issues addressed at the annual budget meetings. (Lic. Ex. 4, p. 2.)

81. Testimony of Leon Paul Hanks.⁷ Leon Paul Hanks (also known as Chris Kellogg) began working for CBI's station KFMZ as a "morning show personality" in August 1985, and was promoted to the position of program director in February 1989. (Tr. 360, 362.) In late 1991 or early 1992, after Rice was released from the hospital, Hanks was given the responsibility of assisting with the programming of the other CMI/CBI stations as group program director. (Tr. 362, 370; *see also* Tr. 256, 495.) In that capacity, Hanks was responsible for the programming of KFMZ and assisted the various program directors at WZZQ. He also critiqued both stations' on-air talent and was involved in recruiting talent for WZZQ and LBI. (Tr. 367-68.)

82. Hanks was terminated on August 5, 1994, by KFMZ general manager Richard Hauschild and Hanks subsequently filed a discrimination lawsuit against CMI for wrongful termination, which is pending. (Tr. 362-64, 427-28, 431, 434, 614.) Hanks, who has epilepsy, contended that "there was no foundation for termination except my health problem." (Tr. 364.) When asked whether he believed his termination by CMI was fair or unfair, he responded: "[M]y thought processes are saying I think it was inappropriate. Therefore, if it was inappropriate, the answer would have to be that it was unfair." (Tr. 434; *see also* Tr. 431-34.)

83. Cox testified that the decision to have the program directors of WZZQ consult with Hanks was made by her, not by Rice. (Tr. 259; *see also* Tr. 619-22.) According to Cox, Hanks was not terminated because of his health problems but because he did not do his job. (Tr. 342.) Cox testified that Hanks had been given an opportunity to take a medical leave of absence to "get his medicine squared away, get his life together." (Tr. 312.) According to Cox, Hanks was not following his doctor's advice. Instead of taking the medical leave that was offered, Hanks took a vacation and, when he returned, Cox stated, his performance was worse than it had been before. Eventually, Hauschild fired Hanks with Cox's concurrence. (Tr. 312-313, 588, 614.)

84. Hauschild described Hanks as "very prideful." (Tr. 614.) During the time they worked together, Hanks "did not take criticism very well [and r]eacted pretty negatively to most criticism." (Tr. 615.) As Hauschild put it, Hanks' firing was "the ultimate criticism." (*Id.*) Hauschild further testified that he attended a deposition of Hanks taken in his discrimination case against CBI. According to Hauschild, Hanks was asked off the record what he really wanted out of the case and Hanks, who was very agitated at the time, stated that he wanted "to get the station, the company, Mike Rice, and everything the law is going to allow me." (Tr. 615.) In the instant proceeding, Hanks vehemently denied making the off-the-record statements attributed

⁷ *See also* paragraphs 118-20, 123-25, and 129, *infra*.

to him,⁸ although he did admit stating on the record at his deposition that he was going to get "[a]ll that the law will allow in my particular case." (Tr. 460-61.)

85. Since November 1, 1994, Hanks has been employed as the program director of another Columbia, Missouri, radio station. (Tr. 361.) According to Cox, this station is a direct competitor of KFMZ (Tr. 552) in that it targets the same audience demographics (18 to 34-year-olds) but with a different format (Tr. 583-85).

86. Hanks testified that, after Rice's release from the hospital, Rice was involved in programming and personnel decisions at the Terre Haute stations. Hanks testified that Rice had listened to WZZQ and believed that the station had strayed from "the central focus of its format." Hanks stated that Rice asked him to listen to the station and then to plan a visit to the station to go through its music. (Tr. 370.) This was the first time that Hanks acted in his capacity as group program director. (Tr. 371.)

87. According to Hanks, his primary job as group programming director was to keep the programming format of KFMZ and WZZQ consistent with what Rice expected. (Tr. 367-68.) Hanks testified that as group program director, he reported directly to Rice. (Tr. 371.) The reports were "overall regular update[s] on how things were going with the station." (Tr. 372-73.) In the beginning, Hanks stated, he had frequent, once or twice a week, telephone conversations with Rice. (Tr. 371-72.) In 1993, when WZZQ was "on track," Hanks and Rice spoke less frequently. (Tr. 371.) During their conversations, he and Rice discussed any possible problems they were having with the program director at the Terre Haute station and whether the new songs that had been added to the playlist were consistent with the station's format. If Rice heard something on the air he did not like, he would let Hanks know about it and expect him to take care of it. (Tr. 372-73.) Hanks also sent to Rice copies of memos he (Hanks) sent to the program directors. However, Hanks, on his own initiative, did not indicate on the memos that copies had been sent to Rice because he "didn't think the program director there needed to know that Mike [Rice] was on top of things." (Tr. 371-72, 435-36.)

88. Hanks testified that, after April 1991, Rice regularly checked KFMZ and WZZQ's new song reports in the trade publication Radio & Records ("R&R"). On several occasions Rice called Hanks to complain that the stations were adding too many new songs. According to Hanks, it was Rice's philosophy that if a station played too many new songs, then it was not playing enough of the old, familiar classics. In the spring of 1992, when WZZQ added 10 new records in one week, Rice called Hanks and wanted to know why. According to Hanks, neither Cox nor Malcolm Rice ever reviewed the stations' playlists. (Tr. 376-77.)

⁸ The Presiding Judge notes that, in responding to the pertinent questions (*see* Tr. 460-61), Hanks became very impassioned and angry, his voice rose in denial, and his face reddened. Hanks appeared to be genuinely and extremely offended by the suggestion that he wanted to "get Mike Rice" or "get his stations." Based upon the observation of Hanks' demeanor, the Presiding Judge will fully credit his denial.

89. Hanks further testified that, after Rice's release from the hospital, Rice was involved in the hiring, and/or firing or replacement of several station employees. These included Janice Pratt (Tr. 398-99, 403), Bob Kinneson (Tr. 400), Sean Madden (Tr. 409), Jeff Davis (Tr. 412-13), Ben Jacobs (Tr. 415-16), Mike Steel,⁹ Mark Savage,¹⁰ and John Rhea.¹¹ Rice also approved moving Jacobs to the position of WZZQ program director. (Tr. 413-14; *see also* Tr. 371.)

90. Hanks stated that, in May or June 1992 (Tr. 399), Rice directed him to replace Janice Pratt, an announcer who worked the overnight shift (Tr. 397-98, 403). Rice thought Pratt "screeches or squawks" on the air and was hurting the station's overnight ratings. (Tr. 398.) He wanted Hanks to "let her go," to "get rid of her." (Tr. 398-99, 403.) There was no question in Hanks' mind that he had to do so; it was his job. (Tr. 399.)

91. Hanks began to look for a replacement and started talking to the station's Saturday night announcer, Bob Kinneson, about his taking over Pratt's position. However, a few weeks later, Rice called and instructed him "to get rid of" Kinneson because he was bringing down the Saturday night ratings. (Tr. 400.) Hanks did not fire Kinneson because Kinneson resigned to work for another station. Hanks still had to replace Pratt, but he did not feel it was appropriate to tell her she was being fired because she "screeched" on the air. (Tr. 400-01.) Hanks eventually fired Pratt for repeatedly coming to work late. After he let her go, Rice told Hanks that he should have done that a long time ago. (Tr. 402.) If the decision were Hanks' to make, had Rice not told him to fire her, Hanks would not have let Pratt go. (Tr. 402-03, 463.)

92. Hauschild testified that, about six months before Pratt was dismissed, he told Hanks that Pratt should either be dismissed or correct her problems. Hauschild stated that Pratt was not only late for work, but did not perform certain required tasks on the overnight shift, and had guests in the studio contrary to station policy. (Tr. 605-06.) According to Hauschild, Rice never told him to get rid of Pratt, and Hanks never told him that Rice directed him to fire Pratt or that Rice had criticized Pratt's on-air voice. (Tr. 606-07.) However, Hauschild admitted that he had no way of knowing whether Rice told Hanks to do something, and Hauschild stated that he was not privy to all of the conversations between Hanks and Rice. (Tr. 632-33.)

93. With respect to Kinneson, Hauschild testified that Hanks fired Kinneson at Hauschild's suggestion because Kinneson was not following or adapting to the format. According to Hauschild, Kinneson "was trying to turn a music station into a talk station." (Tr. 608-09.) Hauschild stated that Rice never made any comments to him about Kinneson's performance, nor did Hanks ever tell him that Rice wanted Kinneson fired. To the best of Hauschild's knowledge, Rice had no involvement in the firing of Kinneson. (Tr. 609.) However,

⁹ See paragraphs 118-22, *infra*.

¹⁰ See paragraphs 123-28, *infra*.

¹¹ See paragraphs 129-31, *infra*.

Hauschild admitted that he did not know whether Hanks spoke with Rice about Kinneson's termination. (Tr. 626.)

94. According to Hanks, Rice told him several times that he was not happy with KFMZ announcer Sean Madden. Hanks testified that although Rice did not like the way Madden sounded on the air, it was not so much his on-air performance that Rice did not like as it was Madden's "aloof" attitude. At the company's 1992 Christmas party, Rice informed Hanks that Madden "needed to be let go." (Tr. 408-09.) Hanks found Madden "difficult to get along with" and did not really care if Madden was fired. (Tr. 411.) However, Madden was the boyfriend of another announcer, Sally Chase, and Hanks was concerned that if he fired Madden, Chase, whom he wanted to keep, would resign. Hanks called Cox for her advice and she advised him to start looking for replacements for both Madden and Chase. (Tr. 410-11; *see also* Tr. 253-54.) Before Hanks could fire Madden, however, Madden quit to take a job in Detroit. (Tr. 411.)

95. Both Hauschild and Cox testified that Rice never made any critical comments to them about Madden's performance on the air. (Tr. 578, 610.) According to Hauschild, Hanks never told him that Rice did not like Madden's sound or on-air personality. (Tr. 610.) Rather, Cox testified that Hanks made critical remarks to her about Madden, and that Hanks wanted to fire Madden because, Cox thought, he saw Madden as a threat to him from a talent standpoint. (Tr. 578-79.) As noted above, Madden was never fired; he quit to take a job elsewhere. Hauschild testified that Madden left after he had been moved from the morning to the evening shift following an Arbitron study and a station-conducted survey. Hauschild testified that Madden viewed the move as a demotion. (Tr. 610-11; *see also* Tr. 627-28.)

96. Hanks testified that, in August 1993, Rice told him to "get a replacement" for Jeff Davis (also known as Jeff Presley) who worked evenings at KFMZ. Hanks stated that Rice thought that Davis was too old for the nighttime position. (Tr. 412-13.) Hanks had worked with Davis for many years, was friendly with him, and did not want to let him go. Hanks stated that he met with Davis privately and told him that Rice did not want him on the air at night any longer. He also told Davis that he had no other position for him and that he would have to let him go. They agreed on a date by which Davis would leave. Hanks testified that he did not agree with Rice's decision to fire Davis and that it was "pretty painful." (Tr. 413, 448.)

97. Hauschild testified that Davis had previously worked for the station as a full-time, mid-day announcer. He left for another job, which he lost, and subsequently asked to come back to KFMZ. The only available time slot was the seven to midnight shift, which he reluctantly took. Hauschild testified that Davis often shared with him that he was "fairly discontent." Davis and his wife were making plans to move to her home town in Kentucky, they had a new baby, and his wife did not like the fact that he was not around every evening. At that time a previous employee of the station who Hauschild knew expressed an interest in coming back to KFMZ. Consequently, Hauschild and Hanks jointly met with Davis who was "relieved of his responsibilities." According to Hauschild, Davis was told that a previous employee was interested in returning and, since Davis had expressed some dissatisfaction with the job and may be leaving shortly, they "no longer need[ed] his services." Hauschild agreed with Hanks that it

was an "amiable parting." (Tr. 612-13, 625.) Hauschild stated that Hanks did not refer to Rice's feelings about Davis in the meeting. Hauschild also testified that Hanks never told him that Rice wanted Davis fired. (Tr. 612.) Nor did Hauschild ever discuss with Rice the issue of Davis' age. (Tr. 612, 614.) However, Hauschild admitted that he did not know whether Rice directed Hanks to fire Davis. (Tr. 612.)

98. Ben Jacobs (also known as Ben Orzeske) started at KFMZ working at night. According to Hanks, in November 1992, he suggested to Rice moving ~~Jacobs~~ to WZZQ as program director. Rice wanted to think about it and, after a week or so, he told Hanks he thought the move "would work." (Tr. 413-14; *see also* Tr. 371.) In addition, Hanks recalled that, during a flight to Chicago on company business, Jacobs asked Rice about moving some staff members around. Rice thought that it sounded like a good idea. When Jacobs returned to WZZQ he made the personnel changes. (Tr. 414-15.)

99. Hanks stated that when Rice learned that the changes had been made, he (Rice) felt betrayed by Jacobs who had acted on what Rice considered to be "casual conversation." Rice told Hanks that he "take[s] that kind of thing personally." (Tr. 415.) After that, Hanks testified, Rice would not give Jacobs a break on "any little mistake" that he made. (*Id.*) Rice told Hanks: "Your boy has got to go." (Tr. 416.) Rice referred to Jacobs in this manner because Hanks was the one who got Jacobs to WZZQ. Within a week or two after their conversation Jacobs was fired. Hanks was not the one who fired Jacobs, and did not know who actually did fire him. (*Id.*) Nor did Hanks know the reason why Jacobs was ultimately fired. (Tr. 448-49.)

100. Cox testified that Jacobs was fired by Kenneth Brown, who told her that the job of program director was overwhelming Jacobs, and that Jacobs was not ready for all the responsibilities of that job. (Tr. 575-76.) According to Cox, Rice never suggested to her or directed her to fire Jacobs (Tr. 260, 593), Rice did not tell her that he was ordering the firing of Jacobs (Tr. 260), and Rice did not tell her that Jacobs "had to go" (Tr. 575). However, Cox admitted that she did not know what Rice may have said to anyone else about this matter. (Tr. 593.)

101. Hanks stated that when Rice gave him suggestions or directions about programming or personnel, he felt compelled to obey those instructions. As far as Hanks was concerned, Rice was his boss, that is, he "was the owner of the station, and there was no doubt that whatever he said is what went final, period, that's it, it's done." (Tr. 417-18.) Although Hanks remembered the meeting at which Cox informed the staff that the Board of Directors had appointed her Chief Executive Officer, he did not recall her stating at the meeting that Rice had been excluded from the day-to-day operation and control of the station. (Tr. 396.)

102. Hanks initially testified that "[o]nce [Rice] made up his mind, it was made up . . . [b]ecause it had never been changed before." (Tr. 404; *see also* Tr. 417.) However, Hanks later admitted that this testimony was not entirely true (Tr. 439), and that it was "a little over dramatic" (Tr. 463). Hanks then altered his testimony by stating that "it was a very difficult thing to change [Rice's] mind" (Tr. 463-64; *see also* Tr. 471), and that Rice "occasionally"